FILE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 63

EUGENE C. JAMES, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 26, 1960
CERTIORARI GRANTED MAY 16, 1960

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1960

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[Vol. 1]

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 12719

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable J. Sam Perry, District Judge.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

EUGENE C. JAMES, Defendant-Appellant.

Appellant's Appendix

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division
No. 57 CR 780

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

EUGENE C. JAMES, Defendant-Appellant.

STATEMENT REQUIRED BY RULE 12(c) OF THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT —June 18, 1959

Now comes the Defendant-Appellant, by his attorneys, and pursuant to Rule 12(c) of the United States Court of Appeals for the Seventh Circuit, states as follows:

[fol. 2] 1. This proceeding was commenced on December 13, 1957, by the return of Indictment No. 57 CR 780.

2. On March 3, 1959, after execution of a Jury Waiver, trial was commenced before the Honorable J. Sam Perry in the United States District Court for the Northern District of Illinois.

3. At the close of the evidence for the Government, the Defendant-Appellant moved the Court for a finding of not guilty, which motion was denied.

4. At the close of all the evidence, the Defendant-Appellant moved the Court for a finding of not guilty, which motion was denied.

5. On May 8, 1959, the Court found the Defendant-Appellant guilty as charged in the Indictment.

6. On May 11, 1959, the Court entered Findings of Fact and Conclusions of Law pursuant to the Defendant's request, which have been made a part of this record on appeal.

7. On May 11, 1959, there was a judgment of conviction of the verdict and the Court sentenced the Defendant to a term of One (1) year on Count I and Two (2) years on Counts II, III, and IV. The sentence on Counts II, III, and IV to run concurrently and consecutive to the sentence on Count I.

8. On May 11, 1959, bail was fixed for the Defendant by the trial court in the amount of Fifteen Thousand ($15,000.00) Dollars.

9. On May 12, 1959, the Defendant-Appellant filed his Notice of Appeal.

Dated at Chicago, Illinois, this 18th day of June, 1959.

Joseph E. Green, Richard E. Gorman, Attorneys for [fol. 3] the Defendant-Appellant, One N. La Salle Street, Chicago 2, Illinois, CEntral 6-7722.

Service of a copy of the foregoing Statement Required by Rule 12(c) of the Rules of the United States Court of Appeals for the Seventh Circuit is acknowledged this 18th day of June, 1959.

R. Ticken, By M. Barnett.

IN UNITED STATES DISTRICT COURT

INDICTMENT

The February 1957 Grand Jury Charges:

That on or about the 19th day of February, 1952, in the Northern District of Illinois, Eastern Division, Eugene C. James, defendant herein, who during the calendar year 1951 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1951, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their joint net income for said calendar year was the sum of $13,375.74 and that the amount of tax due and owing thereon was the sum of $2,353.44; whereas, as he then and there well knew, their joint net income for the said calendar year was the sum of $123,827.09, upon which said net income there was owing to the United States of America an income tax of $70,037.14, in violation of Section 145(b), Internal Revenue Code of 1939; 26 U.S.C. Section 145(b).

[fol. 4]

Count Two

The February 1957 Grand Jury Further Charges:

That on or about the 4th day of March, 1953, in the Northern District of Illinois, Eastern Division, Eugene C. James, defendant herein, who during the calendar year 1952 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1952, by filing and causing to be filed with the District Director of Internal Revenue for the Chicago Internal Revenue District at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their joint net income for said calendar year was the sum

of $23,203.27 and that the amount of tax due and owing thereon was the sum of $5,997.38; whereas, as he then and there well knew, their joint net income for the said calendar year was the sum of $233,469.00, upon which said net income there was owing to the United States of America an income tax of $166,195.67; in violation of Section 145(b) Internal Revenue Code of 1939; 26 U.S.C. Section 145(b).

Count Three

The February 1957 Grand Jury Further Charges:

That on or about the 12th day of March, 1954, in the Northern District of Illinois, Eastern Division, Eugene C. James, defendant herein, who during the calendar year 1953 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1953, by filing and causing to be filed with the District Director of Internal Revenue for the Chicago Internal Revenue District at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that [fol. 5] their joint net income for said calendar year was the sum of $15,223.15 and that the amount of tax due and owing thereon was the sum of $3,107.88; whereas, as he then and there well knew, their joint net income for the said calendar year was the sum of $407,229.41, upon which said net income there was going to the United States of America an income tax of $325,323.04; in violation of Section 145(b), Internal Revenue Code of 1939; 26 U.S.C. Section 145(b).

Count Four

The February 1957 Grand Jury Further Charges:

That on or about the 15th day of April, 1955, in the Northern District of Illinois, Eastern Division, Eugene C. James, defendant herein, who during the calendar year 1954 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America

for the calendar year 1954, by filing and causing to be filed with the District Director of Internal Revenue for the Chicago Internal Revenue District at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their joint net income for said calendar year was the sum of $15,809.58 and that the amount of tax due and owing thereon was the sum of $2,962.88; whereas, as he then and there well knew, their joint net income for the said calendar year was the sum of $45,371.27, upon which said net income there was owing to the United States of America an income tax of $15,847.90; in violation of Section 7201 of the Internal Revenue Code of 1954; 26 U.S.C. Section 7201.

A True Bill: Henry K. Baer, Foreman

R. Tieken, United States Attorney.

[fol. 6]

IN UNITED STATES DISTRICT COURT

ARRAIGNMENT AND PLEA—December 27, 1957

Present: Honorable J. Sam Perry, District Judge

This day comes the United States by the United States Attorney comes also the defendant Eugene C. James in his own proper person and by his counsel and being arraigned upon the indictment filed herein against him pleads not guilty thereto and it is

Ordered that the defendant be and he is hereby given 30 days within which time to file pre-trial motions

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IN UNITED STATES DISTRICT COURT

WAIVER OF TRIAL BY JURY—Filed March 3, 1959

Comes Eugene C. James, defendant in the above entitled cause in his own proper person and by Richard E. Gorman and Joseph E. Green, his attorney, and the defendant, having been advised in open court by the court

of his right to a trial by jury, hereby waives that right and consents to a trial by the court without a jury.

Eugene C. James, Defendant.

Richard E. Gorman, Joseph E. Green, Attorney for Defendant.

[fol. 7] R. Tieken, United States Attorney for the Northern District of Illinois, hereby consents to the waiver by the defendant above-named of a trial by jury of the above-entitled cause.

R. Tieken, United States Attorney, By William A. Barnett, Assistant United States Attorney.

Approved: J. S. Perry, United States District Judge.

In United States District Court

Findings of Fact—May 11, 1959

On December 13, 1957, an Indictment in four counts was returned against defendant charging willful attempted evasion of his income tax and that of his wife for each of the years 1951, 1952, 1953, and 1954, in violation of Section 145(b) of the Internal Revenue Code of 1939 (26 U.S.C. 145(b), and Section 7201 of the Internal Revenue Code of 1954 (26 U.S.C. 7201).

The amounts of the defendant's reported and correct income and tax liability as alleged in the Indictment are as follows:

	Reported		Corrected	
Year	Income	Tax Liability	Income	Tax Liability
1951	$13,375.74	$2,353.44	$123,827.09	$ 70,037.14
1952	23,203.27	5,997.38	233,469.00	136,195.67
1953	15,223.15	3,107.88	407,229.41	325,323.04
1954	15,809.58	2,962.88	45,371.27	15,847.90

[fol. 8] At the opening of trial, defendant, being represented by counsel, executed and filed a waiver of jury in

open court, which waiver was consented to by the Government and approved by the Court. (Tr. 3-4). The case was tried to the Court on March 3, 4, 5 and 6, 1959.

The Court Finds Specially the Following Facts:

1. Defendant filed timely joint income tax returns for himself and his wife for each of the years 1951, 1952, 1953 and 1954 with the District Director of Internal Revenue at Chicago, Illinois. (Tr. 22, 23, 24).

2. The income reported by defendant on his returns consisted of salary received from the Laundry Workers Union, Local No. 46, located in Chicago, Illinois; salary from the Laundry Workers International Union, whose headquarters were in Indianapolis, Indiana; salary from Local No. 985 of the International Brotherhood of Teamsters, located in Detroit, Michigan; certain payments received as a Welfare Deputy for the aforementioned Local No. 46; certain expense monies received from aforementioned Local No. 46. He also reported net losses from the operation of a racing stable. (Exhibits 1 to 4).

3. From January 1, 1950 to August 7, 1952, defendant was seventh Vice President and Acting General Secretary and Treasurer of the Laundry Workers International Union. From August 7, 1952 to December 31, 1954 defendant was General Secretary and Treasurer of the Laundry Workers International Union. In addition, he was Deputy Trustee in charge of Local No. 46 of the Laundry Workers Union from May 13, 1949 until October, 1954, during which period the Local was under a trusteeship. Upon termination of the trusteeship in October, 1954, he became Secretary and Treasurer of the Local. (Tr. 42, 46, 47).

4. Throughout the years 1951 to 1954 inclusive there was [fol. 9] in existence a welfare trust known as the Social Security Department of the Laundry Workers International Union. The trust had been created pursuant to a mandate of the 1949 Convention of the Laundry Workers International Union. The Social Security Department was an entity separate and distinct from the Laundry Workers International Union. The purpose of the trust known as the Social Security Department was to provide welfare

benefits for union members. The Social Security Department was governed by six trustees, three of whom were selected by Management and three by Labor. At no time was the defendant a trustee or other officer of the Social Security Department. (Tr. 42, 43, 44, 60).

5. Defendant was appointed Welfare Deputy for Laundry Workers Local No. 46 of Chicago under a written agreement with the Social Security Department executed on October 9, 1950. (Tr. 64, Exhibit 108). This agreement provided, among other things, that defendant was to receive 5 per cent of all premiums payable to the Security Mutual Life Insurance Company under the latter's contract covering members of Local No. 46, and that expenses incurred by defendant in investigating claims were to be paid by him out of this sum. The agreement between defendant and the Social Security Department contained the following clause:

> * * * Should any surplus remain after payment of said items then it may be retained [by defendant], provided, however, that such surplus shall be reported as income [by defendant] in accordance with law. * * *

In his returns for the years in question, defendant reported as gross income sums allegedly representing the difference between the amounts received and the amounts expended under the agreement. (Tr. 31, 32, 34, 35).

6. The Social Security Department received payments from various employers throughout the country on behalf [fol. 10] of union employees, which payments were deposited by the bookkeeper for the Social Security Department in the Indiana National Bank of Indianapolis, Indiana. The receipt of these funds was regularly recorded by the bookkeeper of the Social Security Department. (Tr. 60, 61, 62).

7. From April 1950 to and including October 1, 1953, the Security Mutual Life Insurance Company of Binghamton, New York, by contract with the Social Security Department of the Laundry Workers International Union, had in effect health and accident insurance policies covering

the members of various laundry workers' locals throughout the country. (Tr. 62, 405, 342). For the period March 1951 to October 1, 1953 premiums on the health and accident policies were paid by the Social Security Department to one Louis B. Saperstein of Newark, New Jersey, an insurance broker and agent for the Security Mutual Life Insurance Company. (Tr. 64, Exhibits 107, 143)

8. Louis B. Saperstein was the Managing Officer of two insurance brokerage firms known as the Harlew Agency of Illinois, Inc., and the Harlew Agency of California, Inc. All checks for payment of premiums to the Security Mutual Life Insurance Company by the Social Security Department were made payable to Louis B. Saperstein and were deposited by him, or persons employed by him, in bank accounts of either Harlew Agency of Illinois, Inc. or Harlew Agency of California, Inc. (Tr. 65, 78).

9. The funds received by Louis Saperstein from the Social Security Department during the years 1951 to 1953 inclusive were wholly disbursed by him for the following purposes:

(a) Payments to the Security Mutual Life Insurance Company of Binghamton, New York, as premiums on the policies in existence between that company and the Social Security Department of the Laundry Workers International Union;

[fol. 11] (b) Payment of claims made by laundry worker employees who, under the terms of the policies, were ineligible to receive benefits from the Security Mutual Life Insurance Company;

(c) By checks drawn to the Order of the Laundry Workers International Union and mailed to the defendant at his residence in Wheaton, Illinois, or at his office in the headquarters of Local No. 46 of the Laundry Workers International Union at 1640 West Van Buren Street, Chicago, Illinois. (Tr. 146, 159, 160).

10. On September 14, 1951, defendant opened a bank account at the Merchants National Bank, Chicago, Illinois,

in the name of the Laundry Workers International Union. (Tr. 48). This bank account was opened without the authorization of the Laundry Workers International Union or the Social Security Department. (Tr. 45, 48). The signature card for this bank account required only the signature of defendant to effect withdrawals from the account. (Tr. 49).

11. Defendant deposited in the above-mentioned Merchants National Bank account all the checks received by him from Saperstein which were payable to the Laundry Workers International Union, and which were drawn on accounts of Harlew Agency of Illinois, Inc. and Harlew Agency of California, Inc. (Exhibits 63 to 81; 109 to 142).

12. The funds so received by defendant and deposited by him in the Merchants National Bank during the years 1951, 1952, 1953 and 1954 amounted to $80,451.35; $175,265.81; $368,367.81; and $29,561.69 respectively (Tr. 427, 428, 429.)

12(a). The funds referred to in paragraphs 11 and 12, supra, were under the laws and statutes of the State of New Jersey embezzled by the defendant, and that under the laws and statutes of such State, the defendant, James, [fol. 12] is guilty of the crime of embezzlement of such funds as a principal, along with Saperstein.

12(b). That Saperstein and the defendant were jointly indicted for the crime of conspiracy to embezzle and for the crime of embezzlement of the funds in question by the Grand Jurors of Essex County, New Jersey, and that such indictment is now pending in the courts of that state; and the defendant has been ordered extradited for trial in New Jersey by order of the Circuit Court of DuPage County, Illinois, which order was affirmed by the Supreme Court of Illinois on March 20, 1959; that there is now pending before the Supreme Court of Illinois a petition for rehearing of the aforesaid order of affirmance.

13. By letters dated July 17, 1951 and July 27, 1951, defendant stated to the Security Mutual Life Insurance Company, that members of the Laundry Workers Inter-

national Union were performing services and incurring expenses in connection with the promotion of the welfare plans, and that in his opinion such functions and expenses were properly the burden of the insurance company. Accordingly, he requested that the insurance company consider reimbursing the union for these expenditures. By letter dated September 10, 1951, addressed to defendant, the insurance company agreed to pay the union $2,500.00 a month as reimbursement for such expenses. The agreement was made retroactive to January, 1951. (Exhibits 171 to 175). Pursuant to this agreement, one check for $20,000.00, covering the retroactive period, was made payable to the Laundry Workers International Union; one check for $2,500.00 was made payable to E. C. James; the remaining monthly checks in the amount of $2,500.00 each were made payable to E. C. James, Acting Secretary-Treasurer of the Laundry Workers International Union. All of these checks were mailed to defendant, endorsed by rubber stamp, and deposited by him in the above-mentioned [fol. 13] account at the Merchants National Bank. For the years 1951, 1952 and 1953 the sums so received and deposited by the defendant totaled $30,000.00, $32,500.00 and $22,500.00 respectively. (Exhibits 144 to 170). The representations made by the defendant to the Security Mutual Life Insurance Company in the aforementioned letters, as a result of which the above sums of $2,500.00 a month were paid by the insurance company, were made without authorization of any other officer of the Laundry Workers International Union or any trustee of the Social Security Department. (Tr. 301).

13(a). That the acts of the defendant referred to in paragraph 13 constituted the crime of embezzlement of the $85,000.00 therein referred to under the laws and statutes of the State of Illinois.

14. On numerous occasions during the years 1951 to 1954 inclusive, defendant visited the Merchants National Bank of Chicago, Illinois, and drew checks on the account maintained by him at this bank in the name of the Laundry Workers International Union. These checks were drawn to the order of E. C. James and were immediately cashed by

him at the bank. (Exhibits 82 to 105; 176 to 192). During the years in question, defendant received from the above sources (i.e., the Harlew Agencies, Inc. and the Security Mutual Life Insurance Company) and deposited in the Merchants National Bank the following sums:

1951	$110,451.35
1952	$207,765.81
1953	390,867.81
1954	29,561.69
Total	$738,646.66

(Tr. 427 to 429)

By May 6, 1954 defendant had withdrawn all funds which he had deposited in this account. (Exhibit 7).

[fol. 14] 15. None of the funds in question were paid over by the defendant to the Laundry Workers International Union or the Social Security Department, and no part of the funds was expended by the defendant for the benefit of the aforementioned union entities. (Tr. 46).

16. During the years involved defendant maintained safe deposit boxes at the Gary-Wheaton Bank in Wheaton, Illinois, the town in which he resided, to which said safe deposit boxes he made frequent entries. During the year 1951 he made nineteen visits to the boxes; during the year 1952 he made twenty-two visits to the boxes; during the year 1953 he made nineteen visits to the boxes; during the year 1954 he made ten visits to the boxes. (Exhibits 432 and 434).

17. Throughout the period in question, defendant also maintained three checking accounts and one savings account at the Gary-Wheaton Bank at Wheaton, Illinois. In addition, he maintained two checking accounts at the Central National Bank in Chicago, Illinois. Defendant made cash deposits to his accounts at the Gary-Wheaton Bank in each of the years 1951, 1952, 1953 and 1954 totaling $27,990.00, $51,860.00, $15,200.00, and $14,310.00 respectively. (Tr. 423 and 424).

In addition to the currency deposits during this time, which exceeded $109,000.00, defendant purchased a horse from Leopha Wilson in November, 1953, for $10,000.00 in currency. (Tr. 253, 254). This currency was not withdrawn from any of defendant's bank accounts. (Tr. 424).

On November 17, 1953 defendant purchased a cashier's check at the Gary-Wheaton Bank in the amount of $2,500.00. There was no withdrawal of a like amount from any of his bank accounts on this date. However, on this same date he made an entry into his safe deposit box at the Gary-Wheaton Bank. (Tr. 276, 277, 436, 437).

[fol. 15] As testified to by Matthew J. Dooley, there was mailed to defendant on December 28, 1953, $27,000.00 worth of stock in the Founders Syndicate of America, Inc., the certificates of which were made out in dummy names and endorsed in blank. This stock resulted from a purchase by Dooley on behalf of a group, including defendant, which group, in the presence of Dooley, had agreed to produce the funds to buy the stock. (Tr. 329, 333, 336, 340, 344, 346, 347).

An analysis of defendant's various bank accounts does not show the withdrawal of $27,000.00 or the withdrawal of any series of checks which would account for the $27,000.00. Defendant's contribution for the purchase of the stock was by cash not withdrawn from his bank accounts. (Exhibits 245, 375, 377, 404, 422, 438, 515).

18. None of the funds withdrawn by defendant from his several accounts at the Gary-Wheaton Bank and the Central National Bank of Chicago during the years 1951 through 1954 were expended on behalf of the Laundry Workers International Union or the Social Security Department, but instead were expended in part for his personal use and benefit. (Tr. 46 and 425).

19. The funds received by the defendant during the years 1951, 1952, 1953 and 1954, which he deposited in the Merchants National Bank of Chicago, Illinois, and subsequently withdrew therefrom, were within his complete dominion and control, and large portions thereof were actually expended by him for his personal benefit. By the receipt of these funds he derived readily realizable eco-

nomic value in the year of receipt. (Tr. 46, 223 to 238, 300 to 301, 429 to 478)

20. Defendant's tax returns for the years in question were prepared on the cash receipts basis by an accountant, Daniel D. Contarsy, from information furnished by the defendant. Contarsy had no knowledge of the receipt by [fol. 16] the defendant of funds from the Harlew Agencies, Inc. or the Security Mutual Life Insurance Company, and none of such funds were reported by defendant in his returns for the years 1951 to 1954 inclusive. (Tr. 35, 37, 427 to 429).

The Court Finds, as Ultimate Facts, Necessarily Inhering in a General Finding of Guilt, and Concludes as a Matter of Law the Following:

1. The sums received by defendant from Harlew Agencies, Inc. and Security Mutual Life Insurance Company, during the years 1951, 1952, 1953 and 1954, totaling $110,451.35; $207,765.81; $390,867.81; and $29,561.69 respectively, constitute taxable income and, accordingly, defendant was under a duty, and required by law, to report such sums in his tax returns. The Federal income tax is levied on the net gains, profit and income derived from any source whatever. The tax is imposed on gains or income whether acquired in a lawful or unlawful manner, including income acquired by embezzlement. That a taxpayer's mode of receipt may be illegal, or that his freedom to dispose of a gain may be assailable by someone with a better title to it, has no bearing on whether the gain is income under the tax laws. The law is that financial or monetary gain to a taxpayer, whether lawfully or unlawfully acquired, constitutes taxable income to the taxpayer in the year when he has such control over it that, as a practical matter, he derives readily realizable economic value from it. It is immaterial whether the receipt of funds by a taxpayer results from misappropriation, embezzlement, or from other lawful or unlawful acts. The fact that in a subsequent year or years a taxpayer has made restitution of part, or all of funds previously received, is of no significance in determining whether the funds were taxable gains in the year in which they were received or appro-

[fol. 17] priated by him. The precise nature of the criminal activity involved, whether it be embezzlement or other crimes, if any, in acquiring the funds here in dispute is not determinative of, and has no bearing on, the question whether such funds are taxable gains to the defendant. Hence, whether the misappropriation or diversion of funds by the defendant constituted, or may be regarded as constituting, the crime of embezzlement, or larceny, or grand theft, or obtaining money by false pretenses, or some other crime or crimes under the applicable state laws is a matter neither relevant nor material to the issues here presented.

2. The defendant, on February 27, 1952, filed a false and fraudulent Federal Income Tax Return for the calendar year 1951, wherein he stated that his net income was $13,375.74 and that the tax due thereon was $2,353.44; whereas his correct net income for that year was $123,827.09 upon which there was due and owing to the United States of America a tax of $70,037.12. The defendant therefore understated his income by $110,451.35 and his tax by $67,683.68 on his return for the year 1951.

3. The defendant on March 4, 1953, filed a false and fraudulent Federal Income Tax Return for the calendar year 1952, wherein he stated that his net income was $23,203.27 and that the tax due thereon was $5,997.38; whereas his correct net income for that year was $230,969.08 upon which there was due and owing to the United States of America a tax of $163,945.75. The defendant therefore understated his income by $207,765.81 and his tax by $157,948.37 on his return for the year 1952.

4. The defendant on March 12, 1954 filed a false and fraudulent Federal Income Tax Return for the calendar year 1953, wherein he stated that his net income was $15,223.15 and that the tax due thereon was $3,107.88; whereas his correct net income for that year was $406,090.96, upon which there was due and owing to the United [fol. 18] States of America a tax of $324,275.68. The defendant therefore understated his income by $390,867.81 and his tax by $321,167.80 on his return for the year 1953.

5. The defendant on April 15, 1955 filed a false and fraudulent Federal Income Tax Return for the calendar year 1954 wherein he stated that his net income was $15,809.58 and that the tax due thereon was $2,962.88; whereas his correct net income for that year was $45,371.27 upon which there was due and owing to the United States of America a tax of $15,847.90. The defendant therefore understated his income by $29,561.69 and his tax by $12,885.02 on his return for the year 1954.

6. Defendant's actions in filing false and fraudulent returns for the years 1951, 1952, 1953 and 1954 were willful and were done in a knowing and conscious attempt to evade and defeat a large part of his and his wife's Federal Income Taxes.

J. S. Perry, Judge.

May 11, 1959.

IN UNITED STATES DISTRICT COURT

JUDGMENT ORDER—May 11, 1959

On this 11th day of May, 1959 came the attorney for the government and the defendant appeared in person and by his counsel and the Court now having heard the defendant's objections to findings of the Government and being fully advised it is Ordered that certain objections be and they are hereby sustained and that certain objections be and they are hereby overruled

It Is Adjudged that the defendant has been convicted [fol. 19] upon his plea of not guilty and a finding of guilty of the offense of Sections 145(b) and 7201, Title 26, United States Code (Wilfully and knowingly attempting to evade and defeat a large part of income tax due and owing to the United States of America) as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year on Count 1 and for a period of Two (2) Years on Counts 2, 3 and 4 of the Indictment, that the sentences imposed on Counts 2, 3 and 4 shall run concurrently with each other but consecutively to and follow the sentence imposed on Count 1

It Is Ordered that execution of sentence be and the same is hereby stayed until May 12, 1959 at 2 P.M.

It Is Further Ordered that appeal bond be and the same is hereby fixed at the sum of Fifteen Thousand Dollars ($15,000.00) with the defendant's wife to sign said bond as surety thereon

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

J. S. Perry, United States District Judge.

[fol. 20] The Court recommends commitment to: [8]

May 11, 1959

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[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number _____" if required. [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] Enter any order with respect to suspension and probation. [8] For use of Court wishing to recommend a particular institution.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed May 12, 1959

Name and Address of Appellant:

Eugene C. James
Leask Lane
Wheaton, Illinois

Name and Address of Appellant's Attorneys:

Joseph E. Green
One North La Salle Street
Chicago 2, Illinois

Richard E. Gorman
One North La Salle Street
Chicago 2, Illinois

[fol. 21] Offense:

Violation of Section 145(b) of the Internal Revenue Code of 4939 (26 U.S.C. 145(b)) and Section 7201 of the Internal Revenue Code of 1954 (26 U.S.C. 7201), that is to say, willfully attempting the evasion of payment of income taxes for each of the years 1951, 1952, 1953, and 1954.

Concise Statement of Judgment or Order giving Date of any Sentence:

Finding of Guilty by the Court on May 8, 1959, with judgment on such finding, and sentence of the defendant, Eugene C. James, to the custody of the Attorney General for a period of one year on Count I, and two years on each of Counts II, III, and IV, the sentences on Counts II, III, and IV to be consecutive to the sentence on Count I, but concurrent with each other.

Name of Institution where Defendant now Confined, if not on Bail:

Defendant released on bail.

I, the above named appellant, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the above stated judgment.

Dated: May 11, 1959.

Eugene C. James

Joseph E. Green, Richard E. Gorman, One North La Salle Street, Chicago 2, Illinois, CEntral 6-7722.

[fol. 22] CERTIFICATE OF MAILING (omitted in printing).

Clerk's Certificate to Foregoing Transcript (omitted in printing).

[fol. 25]

IN UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 12719 September Term, 1959

September Session, 1959

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

EUGENE C. JAMES, Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

OPINION—December 29, 1959

Before Schnackenberg and Knoch, Circuit Judges, and Platt, District Judge.

Schnackenberg, Circuit Judge. After a trial without a jury, the district court found defendant Eugene C. James

guilty of wilfully attempting to defeat and evade a large part of income tax due and owing by him and his wife for each of the years 1951 to 1954 inclusive, as alleged in a four count indictment. From judgment entered on the said findings, defendant has appealed.

The facts are not in dispute. The monies obtained by defendant amounting to over $700,000, which were not included in his returns for the taxable years, were misappropriated by him, partly from a union entity and partly from an insurance company, by means which made him guilty of the crime of embezzlement of such funds as a principal, under applicable laws of New Jersey. Defendant and one Saperstein were indicted for said embezzlement in New Jersey and an order of extradition of defendant from Illinois to New Jersey was affirmed by the [fol. 26] Illinois Supreme Court, *James* v. *Lynch*, 16 Ill. 2d 380 (1959), and a petition for rehearing denied May 19, 1959.

Defendant argues that the receipt of embezzled funds, where the embezzlement has been made the subject of criminal prosecution, and when the fact that the funds were obtained by the crime of embezzlement has been specifically found by the trial court, does not constitute taxable income to the embezzler. He relies on *Commissioner* v. *Wilcox*, 327 U.S. 404 (1946). However, plaintiff contends that, as applied to the facts in this case, the *Wilcox* interpretation of section 22 (a)[1] was rejected by *Rutkin* v. *U.S.*, 343 U.S. 130 (1952). In *Rutkin*, it was held that money obtained by extortion constitutes taxable income to the extortioner. The court applied this test, at 137:

> An unlawful gain, as well as a lawful one, constitutes taxable income when its recipient has such control over it that, as a practical matter, he derives readily realizable economic value from it. *Burnet* v. *Wells*, 289 U.S. 670, 678; *Corliss* v. *Bowers*, 281 U.S. 376, 378. • • •

[1] 26 U.S.C.A. (1939 I.R.C.) § 22 (a).

The court referred, at 138, to *Wilcox* in these words:

> We do not reach in this case the factual situation involved in *Commissioner* v. *Wilcox*, 327 U.S. 404. We limit that case to its facts. There embezzled funds were held not to constitute taxable income to the embezzler under § 22 (a). The issue here is whether money extorted from a victim with his consent induced solely by harassing demands and threats of violence is included in the definition of gross income under § 22 (a). We think the power of Congress to tax these receipts as income under the Sixteenth Amendment is unquestionable. The broad language of § 22 (a) supports the declarations of this Court that Congress in enacting that section exercised its full power to tax income. We therefore conclude that § 22 (a) reaches these receipts.

Three years later, in *Commissioner* v. *Glenshaw Glass Co.*, 348 U.S. 426 (1955), the court cited *Rutkin* in support of its holding, at 429-430, that Congress, in enacting sec- [fol. 27] tion 22 (a), "applied no limitations as to the source of taxable receipts, nor restrictive labels as to their nature"; and that it thereby intended "to tax all gains except those specifically exempted", and thus (433), "to bring the taxing power to bear upon all receipts constitutionally taxable * * *."

Again, whereas the *Wilcox* interpretation resorted to *state* law in determining the absence of a bona fide claim of right to the alleged gain and the existence of an obligation to repay it, *Rutkin* made no resort to state law. Instead it recognized the well settled principle that in matters of federal taxation "Congress establishes its own criteria and the state law may control only when the federal taxing act by express language or necessary implication makes its operation dependent upon state law", *Lyeth* v. *Hoey*, 305 U.S. 188, 194 (1938). See also, *United States* v. *Pelzer*, 312 U.S. 399 (1941); *Jerome* v. *United States*, 318 U.S. 101 (1943); *Estate of Putnam* v. *Commissioner*, 324 U.S. 393 (1945). Thus *Rutkin* was an interpretation of section 22 (a) in keeping with precedent, and

the economic use and benefit test there announced—unlike the claim of right test of *Wilcox*—provided a rule of law susceptible of ready and uniform application to all unlawful gains, however acquired.

For the reasons herein set forth, the judgment of the district court is affirmed.

Affirmed.

[fol. 28]

IN UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 12719

UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

EUGENE C. JAMES, Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JUDGMENT—December 29, 1959

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, in accordance with the opinion of this Court filed this day.

[fol. 29]

IN UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR REHEARING—February 8, 1960

On consideration of the motion of counsel for defendant-appellant for extension of time in which to file petition for rehearing, and affidavits in support of said motion, counsel for plaintiff-appellee having filed no objections thereto,

It Is Hereby Ordered that the time within which defendant-appellant may file a petition for rehearing in this cause be extended for five (5) days from this date.

[fol. 30]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—February 29, 1960

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, Denied.

[fol. 31] Clerk's Certificates to Foregoing Transcript (omitted in printing).

[fol. 32]

SUPREME COURT OF THE UNITED STATES

No. 820, October Term, 1959

EUGENE C. JAMES, Petitioner,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—May 16, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.